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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA  
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9 KENNETH KEEL,

CASE NO. 1:99-cv-06720-AWI-WMW PC

10 Plaintiff,

FINDINGS AND RECOMMENDATIONS

11 v.

12 RICHARD EARLY, et al.,

13 Defendants.  
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15 \_\_\_\_\_/

16 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action  
17 pursuant to 42 U.S.C. § 1983. On November 24, 2008, the Court issued an order finding that  
18 Plaintiff's first amended complaint states cognizable claims against Defendants Ysalva and Grajeda,  
19 but does not state a cognizable claim against the remaining defendants. The Court ordered Plaintiff  
20 to either file an amended complaint or notify the Court of his willingness to proceed only on the  
21 claims found to be cognizable. On May 11, 2009, Plaintiff notified the Court that he does not wish  
22 to amend and is willing to proceed on the claims found cognizable. Based on Plaintiff's notice, this  
23 Findings and Recommendations now issues. See Noll v. Carlson, 809 F. 2d 1446, 1448 (9<sup>th</sup> Cir.  
24 1987) (prisoner must be given notice of deficiencies and opportunity to amend prior to dismissing  
25 for failure to state a claim).

26 Accordingly, it is HEREBY RECOMMENDED that Plaintiff's claims regarding the prison  
27 grievance process and retaliation be dismissed. The Court also recommends dismissal of  
28 Defendants Early, Torbik, Melching, Brown, Flores, Mekemson, DiGiovanna, Paz-Gelacia,

1 Fields, Edgar, Padilla and Rich.

2 These Findings and Recommendations will be submitted to the United States District Judge  
3 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**  
4 **days** after being served with these Findings and Recommendations, plaintiff may file written  
5 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
6 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
7 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
8 1153 (9th Cir. 1991).

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10 IT IS SO ORDERED.

11 **Dated: May 29, 2009**

/s/ William M. Wunderlich  
UNITED STATES MAGISTRATE JUDGE